

No. 78-466

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

STEVE MODLA, PETITIONER

v.

GRiffin B. BELL, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENTS
IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
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Washington, D.C. 20530

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The judgment of the court of appeals was entered on February 21, 1978, and an order denying rehearing was entered on June 20, 1978. The time for filing a petition for a writ of certiorari was not extended and therefore expired on September 18, 1978. 28 U.S.C. 2101(c). The petition was filed on September 19, 1978, and is thus out of time. The time limit of 28 U.S.C. 2101(c) is jurisdictional. See *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 417-418 (1923).

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

WADE H. McCREE, JR.
Solicitor General

NOVEMBER 1978